

**OSOYOOS INDIAN BAND
ACCOMMODATION OPERATOR TAX LAW, 2021**

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SCHEDULES

- I Accommodation Tax Return
- II Notice of Accommodation Tax Reassessment
- III Request for Information by Tax Administrator
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WHEREAS:

A. Pursuant to section 5 of the *First Nations Fiscal Management Act*, the Council of a First Nation may make laws respecting taxation for local purposes of reserve lands and interests in reserve lands, including the taxation of business activities on reserve lands;

B. The Council of the Osoyoos Indian Band deems it to be in the best interests of the First Nation to levy a business activity tax on persons providing accommodation on the reserve for consideration; and

C. The Council of the Osoyoos Indian Band has given notice of this law and has considered any representations received by the Council, in accordance with the requirements of the *First Nations Fiscal Management Act*,

NOW THEREFORE the Council of the Osoyoos Indian Band duly enacts as follows:

PART I - CITATION

Citation

1. This Law may be cited as the *Osoyoos Indian Band Accommodation Operator Tax Law, 2021*.

PART II - DEFINITIONS AND REFERENCES

Definitions and References

- 2.(1) In this Law:

“accommodation” means lodging that is referenced in subsection 9(1) and not excluded under subsections 9(2) or 9(3);

“accommodation tax” or “tax” means a tax imposed, levied, assessed or assessable under this Law and all penalties, interest and costs added to taxes as provided in this Law;

“Act” means the *First Nations Fiscal Management Act*, SC 2005, c 9, and the regulations enacted under that Act;

“chief financial officer” means the person appointed the chief financial officer under the *Osoyoos Indian Band Financial Administration Law, 2018*, who is responsible for the day-to-day management of the systems of the financial administration of the First Nation;

“civil resolution tribunal” means the civil resolution tribunal established under the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25;

“Council” has the meaning given to that term in the Act;

“First Nation” means the Osoyoos Indian Band, being a band named in the schedule to the Act;

“gross revenues” means the total revenues derived from the sale of accommodation, determined in accordance with Part V;

“interest”, in relation to reserve lands, means any estate, right or interest of any nature in or to the lands, including any right to occupy, possess or use the lands, but does not include title to the lands that is held by Her Majesty;

“Notice of Accommodation Tax Reassessment” means a notice containing the information set out in Schedule II;

“operator” means a person, other than a tourism agent, who sells, provides, or offers to sell accommodation on the reserve;

“person” includes a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

“Request for Information” means a request containing the information set out in Schedule III;

“reporting period” means a three-month period, from January 1 to March 31, April 1 to June 30, July 1 to September 30 or October 1 to December 31, respecting which an operator must deliver a Return to the First Nation and pay all accommodation tax owing for that period;

“reserve” means any land set apart for the use and benefit of the First Nation within the meaning of the *Indian Act*;

"residential dwelling" means all or any part of the following

- (a) a house, a cottage or another detached dwelling,
- (b) a duplex,
- (c) an apartment, a condominium or a townhouse,

- (d) an apartment building, or a condominium or townhouse complex, that is used solely for the purpose of single family dwellings,
- (e) a part of a multi-use building that is used for a residential use, and
- (f) land that is attributable to a building, or part of a building, referred to in paragraphs (a) to (e) and that is used for a residential use;

“Return” means a form containing the information set out in Schedule I;

“tax administrator” means the person appointed under subsection 3(1) for the purposes of this Law;

“Taxation Law” means the *Osoyoos Indian Band Property Taxation Law, 2012*; and

“tourism agent” means a person who

- (a) purchases accommodation from an operator, and
- (b) for payment, makes all or any part of that accommodation available for use by one or more persons as part of a tourism service.

(2) For greater certainty, an interest, in relation to reserve lands, includes improvements.

(3) Except where otherwise defined, words and expressions used in this Law have the meanings given to them in the Taxation Law.

(4) In this Law, references to a Part (e.g. Part I), section (e.g. section 1), subsection (e.g. subsection 2(1)), paragraph (e.g. paragraph 7(1)(a)) or Schedule (e.g. Schedule I) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Law, except where otherwise stated.

PART III - ADMINISTRATION

Tax Administrator

3.(1) The person appointed as the tax administrator under the Taxation Law is appointed as the tax administrator under this law.

(2) The tax administrator must fulfill the responsibilities given to the tax administrator under this Law and such other duties assigned to the tax administrator by the chief financial officer from time to time.

(3) The tax administrator may, with the consent of the chief financial officer, assign the performance of any duties of the tax administrator to any officer, employee, contractor or agent of the First Nation.

Revenues and Expenditures

4. Accommodation taxes collected by the First Nation must be placed in the local revenue account of the First Nation and expended only in accordance with an expenditure law enacted by the First Nation under paragraph 5(1)(b) of the Act, or in accordance with section 13.1 of the Act.

PART IV - ACCOMMODATION TAX LIABILITY AND LEVY

Application of Law

5. This Law applies to all operators, and every operator is subject to an accommodation tax in accordance with this Law.

Tax Levy and Rate

6.(1) An accommodation tax is hereby levied and imposed on every operator’s use and occupation of the reserve for the provision of accommodation and must be paid by the operator in accordance with this Law.

(2) Every operator must pay to the First Nation an accommodation tax at the rate of three percent (3%)

of the operator's gross revenues during each reporting period.

Tax Liability

- 7.(1) A person on whom an accommodation tax is levied under this Law is liable for the tax even if
- (a) that person is also liable to pay taxes under other property taxation laws of the First Nation; or
 - (b) that person is exempt from taxes under other property taxation laws enacted by the First Nation.
- (2) Where there is more than one person comprising an operator, each person is jointly and severally liable to the First Nation for all accommodation taxes levied under this Law in respect of that operator.
- (3) Accommodation taxes are due and payable under this Law notwithstanding a complaint or any proceeding initiated or remedy sought respecting an operator's liability for accommodation taxes under this Law.

PART V - DETERMINATION OF GROSS REVENUES

Determination of Gross Revenues

- 8.(1) For the purposes of this Law, an operator's gross revenues are equal to the total consideration received by the operator from the sale of accommodation.
- (2) Without limiting subsection (1), gross revenues include consideration in money and the value of services or property rendered in return for the accommodation provided.
- (3) For clarity, the total consideration received by an operator does not include any taxes or other levies on the sale of accommodation.
- (4) Despite subsection (1), if accommodation is sold as part of a combination of accommodation, meals and other services sold for a single price, the consideration for the accommodation is the fair market value reasonably attributed to the sale of the accommodation alone.
- (5) If any portion of the consideration received for accommodation is other than money, the consideration is the amount
- (a) of similar accommodation sold or available for sale to another person by the same operator on the day or days the purchaser occupied the accommodation; or
 - (b) that is the fair market value reasonably attributable to the accommodation.
- (6) If the tax administrator is of the opinion that the consideration attributed to accommodation under subsection (4) or paragraph (5)(b) does not represent the fair market value of the accommodation, the tax administrator may determine the fair market value for the purpose of determining the operator's gross revenues.

Inclusions and Exclusions from Gross Revenues

- 9.(1) Gross revenues includes revenues from the sale of lodging provided in
- (a) hotels, motels and resorts;
 - (b) boarding, lodging and rooming houses;
 - (c) bed and breakfast establishments;
 - (d) bunkhouses, cabins, condominiums, dormitories, hostels, vacation homes, mobile homes, trailers and stationary vehicles;
 - (e) RV parks and campgrounds;
 - (f) dwellings operated by clubs and associations, whether or not a membership is required for the use of the dwelling; and

- (g) residential dwellings.
- (2) Despite subsection (1), gross revenues do not include revenues from the sale of accommodation that is occupied continuously by the same individual for a period of twenty-eight (28) days or more.
- (3) For greater certainty, accommodation does not include a unit that does not contain a bed, and is to be used to display merchandise, to entertain or to hold a meeting, dinner or reception.

PART VI - RETURNS, PAYMENT AND REASSESSMENTS

Returns and Payment

- 10.**(1) Every operator must, within thirty (30) days after the end of each reporting period,
- (a) complete and deliver to the First Nation a Return for that reporting period; and
 - (b) pay to the First Nation all accommodation taxes owing during that reporting period.
- (2) Accommodation taxes must be paid
- (a) at the office of the First Nation during normal business hours by cheque, cash, money order, or bank draft; or
 - (b) electronically.
- (3) Payment of accommodation taxes made by cheque, money order and bank draft must be made payable to the Osoyoos Indian Band.

Return Requirements

- 11.** A Return
- (a) must be dated and certified as complete and correct by the operator, or where the operator is a corporation, by a person with personal knowledge of the matters certified and actual authority to certify the Return on behalf of the operator; and
 - (b) must be completed and delivered to the First Nation, whether or not the operator received revenues from the sale of accommodation during the reporting period.

Accommodation Tax Reassessment

- 12.**(1) The tax administrator must review every Return received under this Law.
- (2) The tax administrator must make an accommodation tax assessment and deliver a Notice of Accommodation Tax Reassessment to an operator in any case where the tax administrator determines that
- (a) the gross revenues indicated on a Return is not correct;
 - (b) the consideration attributed to accommodation under subsection 8(4) or paragraph 8(5)(b) does not represent the fair market value of the accommodation;
 - (c) revenues from the sale of accommodation have been improperly excluded from the determination of gross revenues;
 - (d) an operator has failed to deliver a Return;
 - (e) an operator delivered a Return with an error or omission; or
 - (f) for any reason an operator has not paid the correct amount of accommodation tax.
- (3) A Notice of Accommodation Tax Reassessment must set out the amount of accommodation tax payable in respect of the reporting period and
- (a) set out the amount of accommodation tax due and owing by the operator, including penalties and

interest, if applicable; or

(b) set out the amount of an overpayment of accommodation tax by the operator.

(4) Where a Notice of Accommodation Tax Reassessment indicates that an operator has made an overpayment of accommodation taxes, the tax administrator must refund the excess accommodation taxes paid, including interest on the amount overpaid, calculated in accordance with subsection (8).

(5) As an exception to subsection (4), if further accommodation taxes payable by the operator are due or accruing due, the tax administrator may apply the amount of the overpayment to those accommodation taxes, provided notice is given to the operator.

(6) The delivery of a Notice of Accommodation Tax Reassessment by the tax administrator constitutes a statement of and demand for payment of the accommodation taxes where accommodation taxes are owing.

(7) Where a Notice of Accommodation Tax Reassessment provides that accommodation taxes are due and owing by an operator, the accommodation taxes are due and payable immediately, and unpaid amounts must bear interest and penalties in accordance with this Law.

(8) Where an operator is entitled to be refunded an amount of accommodation taxes paid, the tax administrator must pay the person interest as follows:

- (a) interest accrues from the date that the accommodation taxes were originally paid to the First Nation;
- (b) the interest rate during each successive three (3) month period beginning on January 1, April 1, July 1 and October 1 in every year, is two percent (2%) below the prime lending rate of the principal banker to the First Nation on the 15th day of the month immediately preceding that three (3) month period;
- (c) interest will not be compounded; and
- (d) interest stops running on the earliest of the day payment of the money owed is mailed, delivered or actually received by the person to whom it is owed.

PART VII - RECORDS, RECEIPTS, INFORMATION AND INSPECTIONS

Record of Accommodation Taxes Levied

13. The tax administrator must keep the following records in respect of the administration of this Law:

- (a) all accommodation taxes levied;
- (b) all Returns received;
- (c) all accommodation tax payments made and receipts issued;
- (d) all Notices of Accommodation Tax Reassessment issued;
- (e) all refunds paid; and
- (f) all enforcement proceedings taken.

Receipts for Payments

14. On receipt of a payment of accommodation taxes, the tax administrator must issue a receipt to the operator.

Operator Records

15.(1) An operator must maintain accurate and complete books of account and other records containing all the information necessary to enable the First Nation to determine the gross revenues of the operator and any other information required to determine the accommodation taxes payable under this Law in each reporting period.

(2) An operator must make the documents referred to in subsection (1) available to the First Nation on request, and allow the First Nation to take copies and extracts as necessary to determine whether an operator is in compliance with this Law and to determine the amount of accommodation tax payable by the operator.

Requests for Information

16.(1) The tax administrator may deliver a Request for Information to any person, including a current or former operator or other person who may have information relevant to the administration of this Law, and that person must provide to the tax administrator, within fourteen (14) days or a longer period as specified in the notice, information, including the production of records, for any purpose related to the administration or enforcement of this Law.

(2) The tax administrator is not bound by the information provided under subsection 15(2) or subsection (1) and may, where the operator

- (a) does not keep adequate records for the purposes of this Law,
- (b) fails or refuses to produce records on the request of the tax administrator, or
- (c) alleges that the operator's records have been destroyed,

make their own determination of the accommodation tax payable by the operator.

Inspections

17.(1) A person authorized by the First Nation may, during normal business hours, enter onto an interest in reserve lands to

- (a) determine whether or not
 - (i) a person is an operator,
 - (ii) the person is engaged in the sale of accommodation, or
 - (iii) this Law is being and has been complied with; and
- (b) inspect, audit and examine books of account and records related to the sale of accommodation on the reserve.

(2) As part of an inspection under this section, the operator must give access to the books of accounts and other records required to be kept by this Law, and allow the First Nation to take copies and extracts as necessary, and the operator must, on request, furnish every facility and assistance required for the entry and examination.

PART VIII - PENALTIES, INTEREST AND ENFORCEMENT

Penalty

18. If all or part of the accommodation taxes are not paid when due as required under this Law, a penalty of ten percent (10%) of the portion that remains unpaid will be added to the amount of the unpaid taxes and the amount so added is, for all purposes, deemed to be part of the taxes.

Interest

19. If all or any portion of the accommodation taxes are not paid when due as required under this Law, the unpaid portion accrues interest at fifteen percent (15%) per year until paid or recovered, and accrued interest is, for all purposes, deemed to be part of the taxes.

Application of Taxes Paid

20. The tax administrator must credit payments for accommodation taxes first, to unpaid taxes from previous reporting periods, with taxes imposed earlier being discharged before taxes imposed later, second,

to a penalty added in the current reporting period, and third, to unpaid accommodation taxes for the current reporting period.

Tax Collection and Enforcement

21.(1) Accommodation taxes levied under this Law are a debt owed to the First Nation by the operator, recoverable by the First Nation in any court of competent jurisdiction or in a proceeding before the civil resolution tribunal, and may also be recovered by any other method authorized under the Taxation Law or other applicable laws, and for this purpose Parts XIII, XIV, XV and XVI of the Taxation Law apply to the collection and enforcement of unpaid accommodation taxes, including with respect to the recovery of the costs of enforcement incurred by the First Nation.

(2) The use of one method of collection and enforcement does not prevent seeking recovery by one or more other methods.

(3) A copy of the Notice of Accommodation Tax Reassessment that refers to the accommodation taxes payable by a person, certified as a true copy by the tax administrator, is evidence of that person's debt for the taxes.

PART IX - COMPLAINTS TO TAX ADMINISTRATOR

Complaints to Tax Administrator

22.(1) An operator may deliver a complaint to the tax administrator respecting an alleged error or omission in a Notice of Accommodation Tax Reassessment delivered to that operator.

(2) A complaint under this section must

(a) be in the form set out in Schedule IV;

(b) be delivered to the tax administrator within thirty (30) days after receipt of a Notice of Accommodation Tax Reassessment; and

(c) include any reasons in support of the complaint.

(3) Within twenty-one (21) days after receipt of a complaint, the tax administrator must review the matter and attempt to resolve the complaint.

(4) If the tax administrator concludes that there was an error or omission in the Notice of Accommodation Tax Reassessment, the tax administrator must mail an amended Notice of Accommodation Tax Reassessment correcting the error or omission, and subsections 12(3) to (8) apply to that Notice.

(5) The tax administrator must advise Council of each complaint received under this section, including the nature of the complaint and the resolution of the complaint, if any.

PART X - GENERAL PROVISIONS

Disclosure of Information

23.(1) The tax administrator or any other person who has custody or control of information or records obtained or created under this Law must not disclose the information or records except

(a) in the course of administering this Law or performing functions under it;

(b) in proceedings before a tribunal having jurisdiction including the civil resolution tribunal, or a court of law; or

(c) in accordance with subsection (2).

(2) The tax administrator may disclose to the agent of an operator confidential information relating to the interest in reserve lands if the disclosure has been authorized in writing by the operator.

(3) An agent must not use information disclosed under subsection (2) except for the purposes authorized by the operator in writing referred to in that subsection.

Disclosure for Research Purposes

24. Despite section 23,

- (a) the tax administrator may disclose information and records to a third party for research purposes, including statistical research, provided the information and records do not contain information in an individually identifiable form or business information in an identifiable form; and
- (b) Council may disclose information and records to a third party for research purposes, including statistical research, in an identifiable form, where
 - (i) the research cannot reasonably be accomplished unless the information is provided in an identifiable form, and
 - (ii) the third party has signed an agreement with Council to comply with Council's requirements respecting the use, confidentiality and security of the information.

Validity

25. Nothing under this Law must be rendered void or invalid, nor must the liability of any person to pay accommodation tax or any other amount under this Law be affected by

- (a) an error or omission in a determination made by the First Nation or the tax administrator;
- (b) an error or omission in a Notice of Accommodation Tax Reassessment or other notice given under this Law; or
- (c) a failure of the First Nation or the tax administrator to do something within the required time.

Limitation on Proceedings

26.(1) A person must not commence an action or proceeding for the return of money paid to the First Nation, whether under protest or otherwise, on account of a demand, whether valid or invalid, for accommodation taxes or any other amount paid under this Law, after the expiration of six (6) months from the date the cause of action first arose.

(2) If a person fails to start an action or proceeding within the time limit described in this section, then money paid to the First Nation is deemed to have been voluntarily paid.

Notices

27.(1) Where in this Law a notice is required to be given, it must be given

- (a) by mail to the recipient's ordinary mailing address or the address for the business premises;
- (b) where the recipient's address is unknown, by posting a copy of the notice in a conspicuous place on the recipient's property or the business premises; or
- (c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address or the address for the business premises.

(2) Except where otherwise provided in this Law,

- (a) a notice given by mail is deemed received on the fifth day after it is posted;
- (b) a notice posted on property is deemed received on the second day after it is posted; and
- (c) a notice given by personal delivery is deemed received upon delivery.

Interpretation

28.(1) The provisions of this Law are severable, and where any provision of this Law is for any reason

Osoyoos Indian Band Accommodation Operator Tax Law, 2021

held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

(2) Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.

(3) Words in this Law that are in the singular include the plural, and words in the plural include the singular.

(4) This Law must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

(5) Reference in this Law to an enactment is a reference to the enactment as it exists from time to time and includes any regulations made under the enactment.

(6) Headings form no part of this Law and must be construed as being inserted for convenience of reference only.

Force and Effect

29. This Law comes into force and effect on the later of

- (a) January 1, 2021; and
- (b) the day after it is approved by the First Nations Tax Commission.

THIS LAW IS HEREBY DULY ENACTED by Council on the 21st day of April 2020, at Oliver, in the Province of British Columbia at which the required quorum of four (4) members of Council was present throughout.

Chief Clarence Louie

Councillor Leona Baptiste

Councillor Justin Hall

Councillor Sammy Jo Louie

Councillor Nathan McGinnis

Councillor Veronica McGinnis

SCHEDULE I
ACCOMMODATION TAX RETURN

NOTE:

1. Every operator that is not exempt from the accommodation tax must complete and deliver a Return for each reporting period even if no accommodation tax is payable.
2. Every operator must complete and deliver a Return and pay all accommodation tax payable on or before the due date in order to avoid penalties and interest. For late payments, a penalty of ten percent (10%) will be assessed. Interest accrues on unpaid amounts at a rate of fifteen percent (15%) per year.
3. All accommodation taxes are due and payable no later than thirty (30) days after the end of each reporting period.
4. Payments must be made electronically, or made at the offices of the Osoyoos Indian Band, at 1155 Sen Pok Chin Blvd, Oliver, BC V0H 1T8, by cheque, cash, money order, or bank draft. Cheques, money orders and bank drafts must be made payable to the Osoyoos Indian Band.
5. Payments for unpaid taxes, penalties and interest are past due and must be paid immediately.
6. All Returns are subject to review and reassessment in accordance with the *Osoyoos Indian Band Accommodation Operator Tax Law, 2021*.

OPERATOR NAME: _____

ADDRESS: _____

Reporting period: From _____, 20__ to _____, 20__

Gross revenues during reporting period: \$ _____ (a)

Total taxes payable during reporting period: (a) x 3%= \$ _____

Total amount paid (enclose payment): \$ _____

CERTIFICATION:

For an individual operator:

I hereby certify that the information given in this Return is complete and correct in all respects.

Name:

Signature:

Date signed:

OR

For a corporate operator:

I hereby certify that the information given in this Return is complete and correct in all respects, and that I am an authorized signatory of the operator.

Name and Title:

Signature:

Date signed:

SCHEDULE II

NOTICE OF ACCOMMODATION TAX REASSESSMENT

DATE OF NOTICE: _____, 20__

NAME OF OPERATOR: _____

ADDRESS: _____

RESPECTING THE BUSINESS LOCATED AT: _____

Pursuant to section 12 of the *Osoyoos Indian Band Accommodation Operator Tax Law, 2021*, the tax administrator for the Osoyoos Indian Band has conducted a reassessment of the taxes owing by the above-referenced operator with respect to the sale of accommodation at the above-referenced business premises, as follows:

Reporting Period: _____, 20__ to _____, 20__.

Reason for this Reassessment:

The gross revenues indicated on the operator's Return was not correct.

The consideration attributed to accommodation does not represent the fair market value of the accommodation.

Revenues from the sale of accommodation have been improperly excluded from the determination of gross revenues.

The operator failed to deliver a Return for the reporting period.

The Return delivered by the operator contained an error or omission.

The operator did not pay the correct amount of accommodation tax for the reporting period.

Indicate any additional details relating to the reason indicated above: _____

SUMMARY OF REASSESSMENT:

Gross revenues during reporting period: \$ _____ (a)

Total taxes payable during reporting period: (a) x 3% = \$ _____

Total amount paid by operator: \$ _____

Amount owing by operator as of the date of this Notice: \$ _____

Penalty assessed as of the date of this Notice: \$ _____

Interest assessed as of the date of this Notice: \$ _____

TOTAL DUE AND OWING: \$ _____

REFUND OWING: \$ _____

All accommodation taxes owing are overdue and payable in full immediately and continue to bear interest in accordance with the *Osoyoos Indian Band Accommodation Operator Tax Law, 2021*.

Please contact our office if you have any questions about this Notice.

Tax Administrator for the Osoyoos Indian Band

[insert contact information]

SCHEDULE III
REQUEST FOR INFORMATION BY TAX ADMINISTRATOR

TO: _____

ADDRESS: _____

PURSUANT to section 16 of the *Osoyoos Indian Band Accommodation Operator Tax Law, 2021*, I request that you provide to me, in writing, no later than _____ **[Note: must be a date that is at least fourteen (14) days from the date of request]**, the following information relating to the above-noted business:

- (1)
- (2)
- (3)

Tax Administrator for the Osoyoos Indian Band

Dated: _____, 20__.

SCHEDULE IV
COMPLAINT TO TAX ADMINISTRATOR RESPECTING
ACCOMMODATION TAX

TO: Tax Administrator for the Osoyoos Indian Band
[address]

NAME & ADDRESS OF OPERATOR: _____

PURSUANT to the provisions of the *Osoyoos Indian Band Accommodation Operator Tax Law, 2021*, I hereby make a complaint that there is an error or omission in a Notice of Accommodation Tax Reassessment.

The details of my complaint are as follows:

- (1)
- (2)
- (3)

(describe the reasons in support of the complaint in as much detail as possible)

Mailing address to which a reply to the complaint is to be sent:

Name of Complainant (please print)

Signature of Complainant (or
Representative)

Dated: _____, 20__ .

A copy of the Notice of Accommodation Tax Reassessment is enclosed with this Form (if applicable).